

**Eaton Corporation and International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 718 and Horace A. Martin.**  
Cases 8-CA-12236, 8-CA-12769, 8-RC-11343, and 8-CA-12782

June 9, 1982

### DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND  
HUNTER

On December 30, 1981, Administrative Law Judge Russell M. King, Jr., issued the attached Decision in this proceeding. Thereafter, the General Counsel and the individual Charging Party filed exceptions and supporting briefs, and the Respondent filed cross-exceptions and a brief in support thereof and in answer to the General Counsel's and individual Charging Party's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

IT IS FURTHER ORDERED that the settlement agreement entered into by the parties on March 21, 1979, in Case 8-CA-12236 be, and it hereby is, reinstated.

IT IS FURTHER ORDERED that the Regional Director for Region 8 renew his approval of the Union's motion to withdraw its objections in Case 8-RC-11343, and thereafter certify the results of the election held in that case on June 8, 1978.

<sup>1</sup> In fn. 23 of his Decision, the Administrative Law Judge stated that alleged discriminate Jenkins testified that the reasons given him for his discharge were failing to call in and "fighting." A review of Jenkins' testimony shows that he stated that those were two of the reasons for which an employee could be discharged under the Respondent's disciplinary system, but that Jenkins was discharged solely for failing to call in for 3 consecutive days. We hereby correct the Administrative Law Judge's inadvertent misstatement, which does not affect the result we reach herein.

### DECISION

#### STATEMENT OF THE CASE AND LITIGATION HISTORY

RUSSELL M. KING, JR., Administrative Law Judge: These consolidated cases were heard by me in Cleveland, Ohio, on January 31, February 1, and March 17, 18, and 19, 1980. In early 1977 there was a union election at (then) Samuel Moore<sup>1</sup> (herein called the Company<sup>2</sup>) and the Union lost. In early 1978 a renewed campaign was initiated by the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC and its Local 718 (herein called the Union) and on May 1, 1978, the Union filed a representation petition (Case 8-RC-11343), with the National Labor Relations Board (herein called the Board), through and with the Regional Director for Region 8 (Cleveland, Ohio), as a representative of the Board's General Counsel. Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director, an election was held on June 8, 1978, among the production, maintenance, and warehouse employees of the Company, employed at its Aurora and Mantua, Ohio, facilities. By a vote of 172 to 116 the Union was rejected. On June 15, 1978, the Union filed Objections 1 through 7, to certain alleged conduct by the Company which purportedly affected the results of the election (Case 8-RC-11343). The Regional Director recommended that a hearing be held to resolve issues raised by four of the Union's objections (1, 3, 4, and 7). The remaining objections were dismissed. The Board adopted the Regional Director's recommendations on September 28, 1978. On September 1, 1978, the Union filed an unfair labor practice charge against the Company (Case 8-CA-12236), alleging that the Company had violated Section 8(a)(1) of the National Labor Relations Act (herein called the Act). On October 13, 1978, the Regional Director issued a complaint in Case 8-CA-12236 and an order consolidating that case with Case 8-RC-11343. The complaint alleges that the Company had engaged in a variety of pre- and post-election conduct violative of the Act, including surveillance and interrogation of employees, threats of unspecified reprisals if the Union were to become the employees' representative, and disparate application of the Company's no-solicitation and no-distribution policy. On March 21, 1979, the Company and the Union entered into a settlement agreement in Case 8-CA-12236. The settlement agreement was approved by the Acting Regional Director on March 26, 1979, and on that date the Acting Regional Director also certified the results of the June 1978 election. The Union had withdrawn its objections in Case 8-RC-11343 simultaneously with the execution of the settlement agreement in Case 8-CA-12236.

<sup>1</sup> The Employer was formerly Samuel Moore & Company. On January 1, 1979, Samuel Moore & Company merged with Eaton Corporation, with Eaton the survivor. Since then Samuel Moore has had no separate corporate existence and has been an operating unit of Eaton.

<sup>2</sup> The terms "Company" or "Respondent" as used hereafter shall apply to Samuel Moore & Company prior to January 1, 1979, and to the Eaton Corporation (successor to Samuel Moore) after said date.

On April 19, 1979, a new unfair labor practice charge was filed by the Union (Case 8-CA-12769) alleging that the Company violated Section 8(a)(1), (3), and (4) of the Act in terminating the employment of Delbert Jenkins on or about April 5, 1979, because of his membership in and activities on behalf of the Union. An amended charge in Case 8-CA-12769 containing these same basic allegations was filed on May 4, 1979. On April 30, 1979, an additional unfair labor practice charge was filed by Horace A. Martin (Case 8-CA-12782), alleging that the Company had violated Section 8(a)(1) and (3) of the Act. The charge was amended on June 4, 1979, and again on June 11, 1979. The original charge alleges that since on or about October 25, 1978, the Company had harassed and discriminated against Martin because of his activities on behalf of the Union. The second amended charge further alleges that on or about April 27, 1979, the Company discharged Martin because he had filed charges under the Act. By letter dated June 5, 1979, the Acting Regional Director advised the Company that he was "hereby withdrawing approval of, and . . . vacating, the Settlement Agreement entered into in Case No. 8-CA-12236." The Acting Regional Director further asserted that he was "reinstating" the charge in Case 8-CA-12236 and would issue a consolidated complaint, absent settlement, including the alleged violations of Section 8(a)(1) in Case 8-CA-12236, together with the alleged violations of Section 8(a)(1), (3), and (4) in Cases 8-CA-12769 and 8-CA-12782. On June 13, 1979, the Regional Director issued an order consolidating cases (Cases 8-CA-12236, 8-CA-12769, and 8-CA-12782), consolidated complaint and notice of consolidated hearing. On the same date, the Union filed a motion for an order rescinding approval of withdrawal request (Case 8-RC-11343). The Union's motion was granted by the Regional Director on July 3, 1979, over the Company's motion in opposition, and July 3, 1979, Case 8-RC-11343 was consolidated with Cases 8-CA-12236, 8-CA-12769, and 8-CA-12782. On November 9, 1979, the Company filed a motion to dismiss Cases 8-CA-12236 and 8-RC-11343, with supporting brief. The motion was based on the alleged improper issuance of the complaint based on charges reinstated outside of the 6-month period under Section 10(b) of the Act. On November 15, 1979, the Union filed a brief in opposition to the Company's motion and the Company responded with an additional (reply) brief on November 23, 1979. On January 7, 1980, the Company filed a request for ruling forthwith on its motion to dismiss. On January 10 the General Counsel<sup>3</sup> filed a memorandum (brief) in opposition to the Company's motion to dismiss and the Company filed a reply brief to the General Counsel's memorandum on January 15, 1980. On January 18, 1980, the Company's motion to dismiss was denied in Washington, D.C., by (then) Chief Administrative Law Judge Arthur Leff. The case went on to hearing commencing January 31, 1980.

The General Counsel called 10 witnesses and the Company called 12 witnesses. Some 26 (mostly multi-page) exhibits were admitted in the case. The various

(consolidated) complaints alleged violations of Section 8(a)(1), (3), and (4) of the Act and the pertinent parts of the Act provide as follows:

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guarantee in section 7;

\* \* \* \* \*

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . .

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act . . . .

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . .

During the hearing the General Counsel moved to amend the consolidated complaint to add some nine new allegations. Five amendments were granted, and the balance was denied.

Upon the entire record, including my observation of the demeanor of the witnesses,<sup>4</sup> and after due consideration of the briefs filed by the General Counsel, the Company, and counsel for the individual, Horace Martin, I make the following:

## FINDINGS OF FACT

### I. JURISDICTION

The pleadings, admissions, and a stipulation filed herein establish the following jurisdictional facts.

At all times material herein until on or about January 1, 1979, Samuel Moore & Company was a corporation duly organized under and existing by virtue of the laws of the State of Ohio with its principal office located in Aurora, Ohio. The Samuel Moore & Company owned and operated various facilities throughout Ohio where it was engaged in the manufacture of plastic products. Among these facilities were plants at Aurora and Mantua, Ohio, the only facilities involved in this case. Annually, in the course and conduct of its business, the Company shipped goods valued in excess of \$50,000 di-

<sup>3</sup> The terms "Regional Director," "General Counsel," and "counsel to the General Counsel" are used interchangeably throughout this Decision, and refer to counsel acting on behalf of the Board's General Counsel.

<sup>4</sup> The facts found herein are based on the record as a whole and on my observation of the witnesses. The credibility resolutions herein have been derived from a review of the *entire* testimonial record and exhibits with due regard for the logic of probability, the demeanor of the witnesses, and the teaching of *N.L.R.B. v. Walton Manufacturing Company*, 369 U.S. 404, 408 (1962). As to those testifying in contradiction of findings herein, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. *All* relevant testimony and evidence, regardless of whether or not mentioned or alluded to herein, have been reviewed and weighed in light of the *entire* record.

rectly to points located outside the State of Ohio. Between April 15 and 17, 1978, the Eaton Corporation, also an Ohio corporation, purchased 90 percent of the stock of Samuel Moore & Company. On August 15, 1978, a wholly owned subsidiary of the Eaton Corporation, merged with Samuel Moore & Company pursuant to a merger agreement dated April 14, 1978. Under the terms of the merger agreement, Samuel Moore was the surviving corporation, and thus became a wholly owned subsidiary of the Eaton Corporation as of August 15, 1978. On January 1, 1979, Samuel Moore & Company merged with the Eaton Corporation itself, with Eaton being the surviving entity. Since that time, Samuel Moore & Company has been an operating unit of the Eaton Corporation and has had no separate corporation existence. At all times material herein the Eaton Corporation has been and is now, an Ohio corporation and since January 1, 1979, through its operating unit Samuel Moore, known as Eaton Corporation Samuel Moore Operations,<sup>5</sup> the Eaton Corporation has annually, in the course and conduct of its business operations, shipped goods valued in excess of \$50,000 from its facilities located in the State of Ohio directly to points located outside the State of Ohio.

Thus, and as admitted, I find and conclude that both Samuel Moore & Company and the Eaton Corporation have been, at all times material herein, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that the Eaton Corporation is also such an employer at this time.

As also admitted, I find and conclude that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. Summary of the Testimony and Evidence<sup>6</sup>

#### 1. Witnesses called by the General Counsel

Horace A. Martin began his employment with the Company during the summers of 1967 and 1968. In September 1969 he became a full-time employee as a "warehouseman." Martin testified that he was a union supporter and during the election campaign of 1978 (between January to the election on June 8) he urged people to sign cards, passed out union literature at the rear door of the plant leading to the parking lot, and spoke up for the Union in the lunchroom. He also attended union meetings and indicated that he, together with 10 or 12 other employees, was "really active" in the union campaign.

Martin testified that 4 to 5 weeks before the election his (then) supervisor, Foreman Harold Summerfield, stated to him that he was "in great jeopardy" because of his union activities and that there was "great pressure" on him (Summerfield), adding that he (Summerfield) was afraid he was going to lose his job because employees in

the warehouse were "strong in support of the union." According to Martin, Summerfield at this time asked him to go with him to Human Resource Manager James Oster and tell Oster that he had changed his mind and would not support the Union. Martin related that he agreed and that he later went to Oster's office and told Oster that he would no longer support the Union. According to Martin, Oster replied that he was glad and further asked him to keep him informed of the Union's plans and activities. To this request, Martin refused, indicating that he would not do so as long as such activities were "illegal."

Martin testified that approximately 8 days before the election Oster approached him "about working in the warehouse" and indicated that he was getting "bad vibes" about him. According to Martin, Oster further indicated that there were ways of getting even with anybody that doublecrossed them, advising that he should speak out in the lunchroom against the Union. Martin replied that "it wouldn't hardly be feasible to speak out against the union" because he supported it. On cross-examination Martin dated this conversation about a month before the election and also testified that he told Oster that he would not support the Union.

Martin testified that 2 days after the election Summerfield told him that he was in "deep trouble" because Oster felt that he had possibly voted for the Union and was going to get an affidavit from him as to how he voted. According to Martin, Summerfield then indicated that they were both going to be eliminated because of the Union, referring to a "pamphlet" entitled "Cumulative Effect." Summerfield then further described "Cumulative Effect" as a process whereby a supervisor notes all possible discrepancies of an employee thus producing a "large file of supposed mistakes which would allow them to circumvent the National Labor Relations Board." Martin testified that, the afternoon following this discussion, Summerfield was replaced by Foreman William Hickman. According to Martin, Hickman told him that "the slate would be wiped clean."

Martin testified that in December 1978 he was given a "writeup" over a mistake that was made on two orders going to the same customer but to different places. Martin conceded that the order had to be returned. Martin added that he was told the writeup should have been a "first writeup" but it was "put a little strongly" and made a "final writeup" at the insistence of Oster. Martin also signed the writeup. Martin indicated that, on November 9, Hickman had counseled him about "careless errors." The fact of this counseling was reduced to writing and, according to Martin, Hickman indicated that if "these mistakes continue, the next step would be a writeup." Martin related that in March 1979, Hickman again counseled him on two occasions and this fact was also reduced to writing. Martin also signed each of these writeups.<sup>7</sup>

Martin also testified that in February 1979 Employee Relations Manager Betty Richards told him that the Company never had a union and would close down

<sup>5</sup> Also referred to herein as the Respondent or the Company.

<sup>6</sup> The following includes a summary of the testimony of the witnesses appearing in the case. The testimony will appear normally in narrative form, although on occasion some testimony will appear as actual quotes from the transcript. The narrative only and merely represents a summary of what the witnesses themselves stated or related, without credibility determinations unless indicated, and does not reflect my ultimate findings and conclusions in this case.

<sup>7</sup> The November and March writeups were admitted into evidence in the case.

before they had a union. Martin related that also in February he wanted to bid for another job and was told that he could not because of the then existing "final writeups." Martin related that on April 17, 1979, Betty Richards, in the presence of his supervisor, Hickman, went over his file with him and read some poor comments about him, indicating that if he made even a slight mistake again he would be discharge, adding that she further suggested he look for another job. Martin went on to testify that between January and April 1979 at least twice a week Summerfield would criticize him for getting involved with Jenkins and Curry and the Union.<sup>8</sup> Martin testified that on April 18, 1979, he filed a charge with the Board and indicated that the following Monday he discussed the charge with Foreman Hickman, again indicating that he thought the December writeup should not have been a "final" writeup.<sup>9</sup> According to Martin, Hickman agreed, indicating that he had tried unsuccessfully to get it changed. Martin then told Hickman that all he wanted was to be "treated decently" and he would be willing to meet with Oster and do what he could to withdraw the charge. According to Martin, several meetings were set with Oster thereafter but were canceled, usually by Oster, adding that before such a meeting could be held he was discharged on April 27.<sup>10</sup>

Regarding the actual discharge, Martin testified that on April 27 Hickman approached him and indicated that he had made an error in a packing shipment. Hickman reported the error and they both went to the office together and, while proceeding to the office, Martin related that he asked Hickman if he were going to get fired over such a small error, and Hickman replied, "Yes," adding that he felt bad about it and that "this is how they fired Summerfield."<sup>11</sup> Martin related that upon arriving at the office he was discharged by Betty Richards.

Martin testified that in April 1979, prior to his discharge, he again passed out union authorization cards at the plant in the shipping department, and in the hopes of obtaining another union election. According to Martin, he passed out about seven cards and received six signed cards back.<sup>12</sup> Martin indicated that "to [his] knowledge" no member of management saw him passing out the cards. Martin conceded that he had made mistakes on his job and that he was warned by his supervisors about these mistakes on "occasions." But Martin added that many mistakes were "created across the street in the main plant but we still got credit for making them."

<sup>8</sup> The record is clear that Hickman took over Summerfield's job in June 1978. Summerfield went to a staff job and later left the Company. He did not testify in this case. Martin recited the 1979 date twice in his testimony.

<sup>9</sup> The record reflects that the charge was in fact filed Monday, April 30, 1979. The following Monday would have been May 7. Martin had signed the charge April 24.

<sup>10</sup> Martin's initial charge of April 30, 1979, alleges discrimination against him since October 1978 (Case 8-CA-12782). On June 4, 1979, Martin filed an amended charge alleging his discharge of April 27 was discriminatory.

<sup>11</sup> There is no evidence in the record that Summerfield was "fired."

<sup>12</sup> Other than this testimony of Martin, and the testimony of employee Dennis Dye that in March 1979 he passed out some cards and union literature, the record does not reflect that a union campaign was otherwise initiated or in progress in the spring of 1979. Martin testified that he "was the one that had the cards" and could "not recall" who gave him the cards.

Martin further added that he himself also discovered and corrected many shipping errors.

Delbert Lee Jenkins was employed by the Company in July 1969 and was discharged April 5, 1979. He worked as an "extruder operator." Jenkins supported the Union during the 1978 campaign by passing out union literature and union authorization cards. Jenkins indicated that he passed out some 30 cards and that he periodically passed out union literature. Jenkins testified that members of management occasionally saw him passing out such literature, and that on one occasion he talked to a certain Tom Abbott of the Company's management about the Union. According to Jenkins, Abbott knew he was in favor of the Union but Jenkins added that Abbott always said, "everybody to their own opinion." Jenkins had no idea when this conversation took place.

Regarding his discharge, Jenkins testified that on Wednesday, March 21, 1979, he had back problems and his wife called in to one Joe Earle and explained that he would not report to work for his shift. Jenkins worked the 10:30 p.m. to 6:30 a.m. shift commencing Sunday night and ended the workweek on Friday at 6:30 a.m. Jenkins testified that the following day (March 22) he went to the plant only to get his paycheck but that he did not work. According to Jenkins, at this time he told Day-Shift Foreman Paul Scarlett that he could not see the doctor until the following Friday (March 23), and Scarlett merely said "Ok." Jenkins went on to testify that on Friday, March 23, 1979, he did see the doctor but that he "did not bother to call-in" until Sunday night (March 25) when he was due to report to work to commence his workweek. When he called in Sunday evening he talked to Supervisor Tom Heffner after the 10:30 p.m. shift had commenced, explaining that he could not come in because of back troubles and further indicated that he would call in when he knew he was coming back to work. Other than going to the plant during the day on Thursday, March 29, Jenkins conceded that his next contact of any nature with the plant regarding his work was on April 4 when one Jerry Rebase visited him at his home and explained that he had been sent there by Supervisor Heffner to explain that his check had been "stopped" and further advising him to go to personnel and get it straightened out. Jenkins related that during the evening of April 4 he went to the plant and talked to Supervisor Heffner, who stated that he did not expect him to call in everyday so long as he knew where he was. Jenkins testified that the following morning, April 5, he reported to personnel with his "doctor's slip" where he was soon confronted by the employee relations manager, Betty Richards, and the general foreman, Dave Chenoweth, who, together, explained that he was discharged and that he would need another doctor's slip to "get [his] check started."<sup>13</sup> According to Jenkins, Richards and Chenoweth further explained that he was dis-

<sup>13</sup> The doctor's slip presented on April 5 by Jenkins was admitted into evidence. It was dated April 5 and in effect excused Jenkins from work because of back problems from March 23 through April 10, 1979. The Company does not contest in this case that Jenkins' back problem did exist or was legitimate. The doctor's slip was signed by "Thomas L. Urbane, D.C."

charged for failing to "report off" for 3 days and for fighting on the job. Although in testimony Jenkins conceded that he did not report or call in after Sunday, March 25, he indicated that he felt that such reporting was no longer necessary, adding that he did not have a telephone. Jenkins also conceded, however, that he knew of the Company's written policy that failure to report off for 3 days was grounds for discharge, but Jenkins added that these company policies meant nothing, and "never have." Jenkins also testified that he had never received any written warnings or a bad evaluation during the 10 years of his employment. Regarding employees fighting, Jenkins testified that he knew of two other fights which occurred in the plant over the years of his employment, which he indicated did not result in any discharges.<sup>14</sup>

Keith Borell testified as a present employee of the Company, where he had worked since 1973. He supported the Union and passed out some cards, usually at the bowling alley. Borell testified that, in November or December 1978, Oster approached him in the lunchroom and, after some idle conversation regarding bowling, he (Borell) explained that he had heard rumors that employee Horace Martin was going to be fired. According to Borell, Oster replied that with Martin's union affiliation and with the trouble he is in, if he made another mistake he would be fired. Borell further testified that shortly after the union election (June 8, 1978) Summerfield told him that because of the Union he and Martin would probably be discharged.

James Curry testified as a present employee of the Company, and related that in 1978 he received a writeup from Foreman Summerfield for making too many mistakes. Curry testified that after this writeup, Summerfield advised him not to get involved with employees Martin or Jenkins, adding that the Union was not going to go anywhere and if he got involved with people in the Union he might get in trouble with the Company. Curry added that subsequent to this conversation he then went to the personnel department and talked to Employee Relations Manager Betty Richards about the writeup, explaining that he thought it was not fair. According to Curry, Richards said she would look into the matter. Curry went on to testify that about a week later (and in April or May 1978) he engaged in one incident of passing out union literature at the back of the plant, and that a few days later Oster told him that "he had better be careful what [he] was doing."

Dennis L. Dye testified as a present employee and had worked for the Company since 1974. Dye indicated that he was involved in the union campaign in 1978, was a union committeeman in the plant, and during the 1978 union campaign in the spring he passed out union authorization cards and union literature within the plant. According to Dye, he directly notified his foreman, Dale Monroe, that he was so involved with the Union, and Monroe simply said "nothing." Dye also indicated that he was involved with the Union in the spring of 1979, when he passed out union authorization cards and union literature.

<sup>14</sup> The evidence establishes that fighting was not a factor in Jenkins' discharge. The Company's position is that Jenkins was discharged solely for failing to report or call in for more than 3 days.

Dye testified that, when the 1978 union campaign started, employees were told not to move around the plant or to leave their machines, and were further instructed that, if they were approached by another employee, they were to instruct that employee to go back to his work station or his machine. In his testimony, Dye cited instances where employees Rus Targo and Frank Clout were told not to approach his machine, and Dye further added that "we were harassed all the way up until the election." Dye went on to testify that in early March 1979 he received a written evaluation from his foreman, Dale Monroe, which contained remarks that he had a "bad attitude towards the company." Dye related that he asked Monroe the reason for the remark and Monroe replied that the remark was included in his evaluation solely because of his union support. Dye testified that he subsequently complained about the remark in the evaluation to Human Resource Manager Oster and others, and made remarks to other employees, when supervisors were nearby, to the effect that he was considering taking the matter to the "NLRB." Dye indicated that shortly after these remarks the evaluation was favorably changed. Regarding fights in the plant, Dye testified that about 3 years ago there were two different fights involving the same individuals. According to Dye, neither were terminated, but after the second fight both individuals received a "5 day dismissal."

Robert Nowak testified as a present employee and had worked for the Company since 1972. He was also involved in the 1978 union campaign. According to Nowak, the two major organizers in the plant during the 1978 campaign were employees Dave Toth and Paul Scarlett. Nowak testified that during the 1978 campaign a union leaflet had been placed under the plexiglass on the top of the desk of employee Dave Toth. According to Nowak, Foreman Joe Earle instructed Toth to remove it, which Toth did. Nowak went on to describe how another employee, Roy Kellison, had the wall of his office "plastered" with nonwork related materials such as sports material, and was never requested to remove any of the material. Nowak also testified that employee Toth's foreman also "tailed or surverved" Toth when he left his desk to inspect tubing, and, if Toth spent too much time on the "line," the foreman would approach Toth and Toth would immediately leave.

Employee Roy M. Peck, Jr., testified as a present employee of the Company and began his employment in 1970. Peck indicated that during the 1978 union campaign he was a union supporter, handing out union authorization cards and literature and attending union meetings. Peck testified that on June 5, 1978, the Company held an employee meeting to which all of the members of his shift (day shift), approximately 75, were required to attend. According to Peck, Former Company Board Chairman Frank Ohlton was the principal speaker, but Company President Bradford Burnham spoke first, giving a short sketch of his life and the history of the Company, and then giving a "summation speech against the union." According to Peck, Ohlton stated during the meeting that the Union was "an insult to the intelligence of the workman and would lead to the company being a

less desirable place to work." Peck went on to testify that, at the end of the meeting, Burnham stood by the door as the employees were leaving, said hello to everybody else, and asked him "in a very mocking way" if he was "still happy now."

George Carpenter testified as a present employee and indicated that he had supported the Union during the 1978 campaign, including passing out union authorization cards and union literature. Carpenter also testified that around May 1, 1978, he had a conversation at the plant with Human Resource Manager Oster. Employee Eugene Williams was also present. According to Carpenter, questions were asked regarding the effect of the company merger at the plant. Oster replied that he did not think the merger would have any effect at all, adding that "the union had worried him." Eugene Williams also testified as a present employee and regarding the conversation with Oster around May 1, 1978, Williams testified that Oster stated "if the union got in he'd be concerned about that."

Employee David A. Toth was employed by the Company from December 1978 until August 10, 1979, with the exception of a 4-year period between 1970 and 1974 when he served in the Air Force. Toth testified as a resident of Georgia, where he was a full-time student at the Toccoa Falls Bible College. During the last 4 years of his employment, Toth was a tubing inspector and his foreman during the 1978 union campaign was Ron Fournety, who actually did not work his shift, but who was in charge of the inspection department. Toth supported the Union, solicited union authorization cards, and passed out union literature. According to Toth, management knew he strongly supported the Union and Toth testified that he and employee Paul Scarlett were leaders of the union movement.<sup>15</sup>

Toth testified that, as an inspector, he would spend a considerable amount of time on the production line and that he would frequently talk to other employees. After the Union's representation petition was filed on May 1, 1978, Toth indicated that Ed Hrobak came on as foreman of his shift and Toth testified that Hrobak "was in constant surveillance of [him] and in fact was never more than a minute behind [him], where ever [he] went in the shop." Toth added that at one time he almost led Hrobak into the restroom. Toth related that there were other inspectors on the same shift and that they continued about the production area freely and without surveillance.

Toth testified that, during the second week of May, Joe Earle was serving as foreman on his shift and that, after Earle discovered a union leaflet under the plexiglass on his desk, Earle instructed him to remove it. Toth related that he explained it was his area and asked Earle if it was all right to have the leaflet, to which Earle replied "no." Toth then indicated that he would rather not remove the leaflet to which Earle replied that, if he did not remove it, that he (Earle) would remove it himself. According to Toth, he then removed the leaflet without

any further argument with Earle. Toth testified that another employee, Roy Kellison, had antiunion material both on his desk and attached to his machine, and this material remained throughout the campaign.

Toth testified that on one occasion during the third week of May 1978 he had caught up in all of his inspections and went out on the floor to talk to employee Ralph Hayes. According to Toth, Hrobak approach him and directed him to go back to his cage (office), which he did. Toth related that after his shift was over he complained to Foreman Ron Fournety about Hrobak's actions and Fournety said he would look into the matter. Toth went on to testify that on June 7, 1978, a similar incident occurred as he was returning from the washroom just before the end of his shift.

Toth testified that on July 18, 1978, the Company posted a summary of the objections to the election that the Union had filed with the Board. Toth was mentioned, by name, in three of the objections, one of which was misquoted. Toth testified that several weeks later he complained to Oster about the misquoted objection and also about the fact that employees' names were used. According to Toth, Oster explained the objection had been received over the phone and that some may have thus been taken down incorrectly. Toth further testified that on September 11, Oster asked him if he knew anything about any "new charges or objections that were being filed." Toth replied at that time that he knew nothing.

## 2. Witnesses called by the Company

James Oster testified as the Company's human resource manager, relating that one of his jobs was to keep the Company free of unions.<sup>16</sup> During the 1978 election period, Harold Summerfield was supervisor or foreman of the shipping department and according to Oster, in April 1978 he met with Summerfield and Martin in his office, in the presence of the Plant General Foreman Dave Chenoweth. Oster testified that employee Martin commenced the conversation by stating that he did not support the Union. Oster indicated he replied that he was "glad to hear that." Oster denied asking Martin to keep him informed about the Union and further denied that he requested the meeting, explaining that he did not know how the meeting really came about other than receiving a phone call from either Martin or Summerfield. Oster further denied that he knew of Martin's union activities at that time.

Oster testified that a few weeks before the election he stopped by Martin's work station and stated that he had "bad vibes" about him, accusing him of passing out union literature. According to Oster, Martin replied that he had passed out union literature but was not "interested" in the Union although he had friends that were in support of the Union and that he did not want to disappoint them. Oster testified that after discussing Martin's union interest further, he remarked to Martin, "Well, if you want to speak out for the company please feel free to do so." Oster denied telling Martin that the Company

<sup>15</sup> Employee Paul Scarlett was summoned to testify in the case, although he never appeared. He apparently lived some 4 or 5 driving hours from Cleveland, but had back problems. Since it could not be determined when he would be available, the hearing was closed without his testimony.

<sup>16</sup> Oster remained in the hearing room throughout the entire case, including the testimony of all witnesses, as did Employee Relations Manager Betty Richards.

had ways of getting even with employees who supported the Union.

Oster testified that he never talked to either Martin or Summerfield after the election about the results of the election and that he had no knowledge of any management representative giving either Summerfield or Martin any reason to believe they were in trouble because of the Union. Oster indicated that several weeks after the election Summerfield was transferred to a "staff position" because, as a supervisor, he had a tendency "to run things his own way." According to Oster, Summerfield remained with the Company thereafter approximately 1 year, when he voluntarily quit. Regarding Oster's conversation with employee Keith Borell, Oster testified that sometime after the election he talked about the company bowling league with Borell and that he did not "recall" or could not remember anything being said at that time about employee Martin. In cross-examination Oster flatly denied that he had talked to Borell about Martin during the conversation.

Regarding Martin's final warning and his discharge, Oster testified that he was not directly involved in the warning of December 12, 1978, or in Martin's ultimate discharge. He conceded that he did talk to Employee Relations Manager Betty Richards prior to the warning but the issuance of the warning was Richards' decision. Oster added that Martin's ultimate discharge was not his decision and that Richards reported directly to General Foreman Chenoweth. However, Oster testified that Martin had a "spotty" work record which had developed over a period of many years. Oster continued that over the years Martin had different jobs, some of which he had been disqualified from. Oster testified that at Martin's present job he had made numerous errors and thus the Company had decided to "discontinue to try to assist him." Oster testified that the Company had "gone through the series of steps and had arrived at the final warning step which is a very serious step that says to the employee, if you do not correct the problem you will be replaced." Oster described the warning system as a three-step warning procedure, with the third warning being the final step. Oster testified that, as far as he knew, Martin's ultimate termination involved an error in a shipment of "a fairly large magnitude in relation to other mistakes he had made." Oster conceded that he did not know if this mistake had caused the Company a monetary loss, and added that Martin had a very good attendance record. Oster denied that Martin's union activities had anything to do with Martin's ultimate termination, indicating that Martin had told him that he was not an active participant in the Union and that he (Oster) "Had no reason to disbelieve him." Oster testified that the two active union spokesmen were employees Dave Toth and Paul Scarlett at the Aurora plant. Oster indicated that as far as he knew employees Martin and Jenkins were not active union spokesmen although "their names may have been connected with the union but they were not active in the form of Dave Toth and Paul Scarlett." Oster denied that he ever threatened to fire Martin because of his union activities and further denied that he told him he was an "undesirable" employee and that the Company should get rid of him.

Regarding the discharge of employee Jenkins, Oster testified that the sole reason for this discharge was the fact that Jenkins missed 3 consecutive days off work without reporting. Oster testified that he had no recollection of any conversations with employee Carpenter or Williams and Oster further denied that he ever threatened plant closure if the Union got in, although he did concede that he was "worried about the union coming in" as he was "responsible for trying to make sure that it did not take place." Regarding former Board Chairman Ohlton's speech to the employees at the Mantua plant, Oster testified that although Ohlton wrote the speech he edited it for form, content, and to insure it "did not violate any law." Oster added that he was not present when the speech was given by Ohlton. Regarding posting of the election objections, Oster testified that the Company received a copy of the objections in the mail and that he made a "summary of charges" contained in the objections, as they were conveyed or read to him over the phone by one Dick Colvin, and thereafter posted this summary on the company bulletin board. Oster conceded that in September he talked with employee Toth, and that he explained at that time to Toth that he "got this charge" and asked Toth if he knew anything about it. According to Oster, Toth replied that he knew about some things but did not know what he was referring to regarding "this charge," and that the conversation thereafter ended.

Michael Hickman testified as a present employee of the Company and up until June 12, 1978, he had worked as a "leadman" for 6 years. On June 12, 1978, Hickman took over Summerfield's job as shipping foreman and thus became employee Martin's supervisor, and remained such from June until Martin's termination on April 27. Hickman related that he had known Martin since he had come to work for the Company for some 8 or 9 years.

Hickman testified that Martin's errors were "quite extensive, more so than any others [employees]." Hickman related that, during his first week as shipping foreman, Martin stated to him that he had heard that he would "not last 6 weeks" under Hickman as foreman because of his union activities. Martin further stated that he did not want to be "surprised by mistakes" as previous foreman had done to him. Hickman testified that he replied that all errors in his file by previous foreman would be removed and that under him he would start with a "clean slate." Hickman indicated that in fact he did remove records of all previous mistakes from Martin's file. Hickman testified that thereafter he discussed errors or mistakes with Martin on an average of once a week or more, and that other employees would make errors only once every 6 to 8 weeks. Hickman indicated that Martin, with one exception, would always admit the errors, which included wrong part numbers on shipping reports, incorrect quantity or part to be shipped, and incorrect packaging and stenciling. Hickman testified that beginning with once in the summer of 1978, and more often in the fall, he had both talked to Martin and placed written records of his errors in his file. According to Hickman, many of these errors were reflected in shipping orders



which Martin had initialed, and shipping reports which he filled out.<sup>17</sup>

According to Hickman, the decision for Martin's so-called final warning in December 1978 came through personnel and involved Employee Relations Manager Betty Richards and his boss, Material Manager Wilber Lanese. Hickman indicated that he learned from Richards and Lanese that Oster was in agreement with the "final warning." Hickman related that he did not initially agree with issuing the warning as a "final warning," but later agreed with Richards and Lanese that it might "shake [Martin] enough to make him realize he had to improve." Hickman testified that after this final warning Martin expressed the feeling that the Company was being "too hard" on him, but he agreed to try harder. Hickman testified that another written warning was issued to Martin on March 7 and that this warning was not an additional "final warning" and in effect gave Martin "another chance." Hickman testified that Martin's "careless mistakes" continued and that on approximately April 17 a meeting was held with Martin, himself, Richards, and Lanese. At that meeting Martin's continuing mistakes were mentioned and Lanese explained to Martin that he was on "thin ice." According to Hickman, Richards suggested that Martin may be too "intellectual" for warehouse work and should probably seek other employment, to which Martin replied that he "didn't know why his mind was not on the job but that he would try to do better." Richards then stated that any further costly errors would result in his discharge.

Regarding Martin's actual discharge, Hickman testified that Martin made an error on a "Duke Power" order which ultimately delayed the shipment several days and caused loss time in packaging. According to Hickman, upon discovery of the error he reported it to Lanese and Richards. Martin admitted the error, and soon after he and Martin met with Lanese and Richards again, and Martin was then discharged. Hickman testified that the warnings or the actual discharge had nothing to do with Martin's union activities and conceded that his attendance was "excellent." Hickman also conceded that Martin at one point had told him that he had been in contact with the Board but he denied telling Oster about this fact or telling Martin (or anyone else) that he (Hickman) thought Martin had a good case.

Wilber Lanese testified as a present employee and had worked for the Company for 5 years. He had been the materials manager for 1 year and prior to that he was the production control manager. As materials manager, he was totally responsible for shipping, receiving, purchasing, and material control. He was in charge of the entire warehouse and Warehouse Foreman Hickman reported directly to him. According to Lanese, Summerfield was replaced by Hickman in June 1978 because Summerfield had "managerial problems which he had not fulfilled with cooperation on his part." Lanese added that Summerfield's transfer had nothing to do with the Union.

Regarding employee Martin, Lanese testified that his work was "basically poor" under Foreman Hickman. According to Lanese, Martin made "numerous errors, repetitive type errors in routine type jobs . . . rather numerous and therefore obvious errors." Lanese attended the April 17 meeting with Martin, Hickman, and Richards. At that meeting Martin's errors were discussed and he and Richards decided that, if any more costly errors occurred or were made by Martin, he would be terminated. According to Lanese, Martin acknowledged the errors that he had made and stated that he would be more careful in the future. Regarding Martin's discharge on April 27, Lanese indicated that he learned of another costly error and met with Martin, Hickman, and Richards and after going over the error with Hickman, he (Lanese) made the decision to discharge Martin. Lanese testified that he had no knowledge of Martin's union activities, or those of any other employee, and that the overall reason for Martin's discharge was "upon the accumulation of . . . past errors and he had been given his two written warnings and his final and that was the absolute end." Lanese initially testified that the Duke Power error of April 27, resulting in Martin's discharge, cost the Company between \$500 and \$1,000 in addition to "some problems from the customers standpoint." In cross-examination, Lanese refuted this statement, indicating that the error had not cost the Company any money, and adding that it would have cost money if it had not been caught.

Betty Richards testified as a present employee of the Company where she had worked for over 6 years. As employee relations manager she was responsible for hiring, firing, wage administration, and all things related to personnel. Richards conceded that sometime between January and April 1979 she told employee Martin that the Company never had a union, never wanted a union, and "that was a fact of life." She denied stating that the Company would close down if it had a union. Richards testified that she knew the employees involved in supporting the Union, adding that Martin was "absolutely not," although she conceded that she heard that Martin had passed out "cards or leaflets."

Richards testified that on April 17, 1979, she met with Martin, Lanese, and Hickman, at which time they all discussed Martin's earlier December "final writeup" and subsequent errors. According to Richards, Martin acknowledged the errors indicating "his mind sometimes did not stay on those things, on the job." According to Richards, she informed Martin that he was very intellectual and in her opinion he would not bring himself down to the level of a "mundane" shipping job. Richards added that she suggested to Martin that he look for another job. Martin testified that she, Lanese, and Hickman then decided that if Martin committed one more "costly error" he would be terminated, and that Hickman would determine if the error was costly, because he knew the shipping procedure.<sup>18</sup> Richards conceded that, after the

<sup>17</sup> Admitted into evidence in this case are a number of shipping orders which Hickman testified from, pointing out what he considered to be errors. Also admitted into evidence were a number of so-called written warnings, most of which Martin acknowledged seeing by signing or initialing.

<sup>18</sup> Richards prepared and had typed minutes of this meeting and they were admitted into evidence.



April 17 meeting and before Martin was discharged, Hickman had told her that Martin was either going to or had contacted the Board.

Richards testified that on April 27 she was notified that Hickman had reported that Martin committed another costly error. She then met with Martin, Hickman, and Lanese, and Hickman explained what had happened. According to Richards, Martin apparently had discovered the error but he explained at the meeting that he "forgot" to go back and change it. Richards went on to testify that Lanese felt there was nothing left but to discharge Martin and the final discharge decision was "kind of collective," and was actually made because "the company could no longer afford Horace Martin."<sup>19</sup> Richards testified that Martin's union activity had nothing to do with his discharge, but that she did not actually know whether the April 27 error actually cost the Company any money.

Regarding the discharge of employee Jenkins, Richards testified that the rule regarding calling in when absent required an employee to call in each day he is ill unless there exists a medical slip that he will be absent a set number of days. According to Richards, if an employee misses 3 days in a row and fails to call in, he is subject to being terminated. Richards testified that General Foreman Dave Chenoweth informed her that Jenkins had come in for his paycheck and related that he was having back problems, but he had not heard from Jenkins for 3 days. Richards related that she had not received any doctor's slip regarding Jenkins and that on the fourth day of his absence without calling in Jenkins was sent a "Mail-O-Gram." The following morning (April 5) Jenkins came in. Richards indicated that at that time she had not realized that he had visited the plant the previous evening. Richards testified that she then met with Jenkins and General Foreman Chenoweth, and Jenkins explained that he had been sick and handed her a doctor's slip dated that day (April 5), indicating that the first time he had recently been to the doctor was April 5.<sup>20</sup> The slip was from a Doctor Urbain who she said was familiar with the Company's procedures and practices regarding specific dates. Richards testified that she did not call Doctor Urbain, although she had on occasion called him regarding other employees. Richards testified that she realized that Jenkins was ill, and that he was, nevertheless, discharged for not calling in. Richards added that if the doctor's slip had indicated that he was incapacitated from calling in, "we should have taken that into consideration." Richards also conceded that Jenkins explained he did not call in because he had no phone and did not want to bother his neighbors. Richards testified to one other employee that she remembered being discharged for the same reason, one Martin Cummings, who was discharged in October or November 1978. Richards conceded that she had been told prior to Jenkins' discharge that he had passed out union literature, although there were four other employees (Toth, Scar-

lett, Dye, and Nowak) who were more active in union activities. According to Richards, Jenkins' discharge had nothing to do with the Union, adding that in February 1979 she had approved Jenkins' request for tuition aid. According to Richards, Jenkins wanted to finish high school and she encouraged this. This high school program took approximately 2 years and Richards testified that the Company paid the entire tuition (\$800) in advance. Richards conceded that over his 10 years of employment Jenkins was a good employee with no particular attendance problems.

General Foreman Dave Chenoweth testified as a present employee of the Company. Martin's supervisors (Summerfield and Hickman) reported directly to him. Chenoweth testified that approximately 4 to 5 years ago Martin was a forklift operator and was removed for "causing costly damage" to "reel product." Chenoweth added that approximately 2 years ago Foreman Summerfield talked to him about Martin "making several mistakes." Chenoweth indicated that Summerfield would on occasion speak to him about Martin's mistakes, but, as a supervisor, he would seldom actually talk to Martin about these mistakes. Chenoweth testified that he attended a meeting in May 1978 with Martin, Summerfield, and Oster. According to Chenoweth, the meeting was held at Martin's request, and that during the meeting Martin explained that he did not want any part of the Union and that he wanted to help save Summerfield's job. Chenoweth denied that at that meeting Oster asked Martin to keep him informed about the Union.

Tom Heavner testified as a present employee of the Company and was employee Delbert Jenkins' foreman. Heavner testified that in late March and early April 1979, he talked to Jenkins twice when he was off, first on Sunday night March 25, when Jenkins phoned and explained that he was going in for x-rays and "would be off." According to Heavner, Jenkins did not know how long he would be off and he explained to Jenkins to "keep in touch with us and let us know." Heavner testified that the next time he talked to Jenkins was on April 4 in the evening. Earlier that day Heavner had requested another employee to stop by Jenkins' home and ask him to report in. Heavner explained that he did this because he wanted to give Jenkins "a chance to tell us how he was," and "to be able to schedule or work." Heavner denied telling Jenkins that he did not have to call in as long as he knew where he was. Heavner initially indicated that at the plant on April 4 he told Jenkins "to be sure and let us know and to keep in touch with us." On cross-examination Heavner denied that he made such a statement to Jenkins on April 4. Heavner testified that he thought Jenkins was going to be "laid up" until March 29, and on that day Jenkins came in only to pick up his check in the morning and talk to Day-Shift Foreman Paul Yarin. Heavner testified at the plant on April 4, Jenkins explained that he had seen a doctor but did not have a doctor's slip, whereupon he advised Jenkins to get a doctor's slip and report to personnel the following morning.

Earl Hawkins testified as a present employee of the Company and as maintenance foreman. He had been em-

<sup>19</sup> Richards also made minutes of this meeting which were later typed and admitted into evidence.

<sup>20</sup> As indicated earlier, although the slip was dated April 5, it recited a back condition which called for a potential work absence from March 23 to April 20.

played by the Company for 15 years. Hawkins indicated that sometime prior to the June 1978 election he received a complaint from Betty Richards that maintenance employees were taking extended break periods in the breakroom. Hawkins related that Richards told him she had received a complaint from employee (and union organizer) Paul Scarlett that two maintenance employees were spending time in the breakroom "talking against the union." According to Hawkins, he thereafter talked to the two employees involved and told them to restrict their break period to the allotted 10 minutes.

Joe Earle testified as a present employee of the Company and as production foreman on the second shift. He had worked for the Company for 10 years. Regarding employee Dave Toth, Earle testified that sometime in April 1978 and prior to the 1978 election he found a "union page" on Toth's desk under the plexiglass covering, and he asked Toth to remove it. According to Earle, Toth asked if he had to remove it and he replied that he did, explaining that he was not allowed to have it on company property. According to Earle, Toth made no further objection and made no reference at that time to the fact that other employees were being allowed to distribute pro-company literature or keep such material on their desk. Earle added that he also did not permit such pro-company literature to be kept or displayed in the plant. Earle denied that employee Roy Kellison had union literature (pro or con) attached to his plant machine, although he did have a "paper clipping" about unrelated items.

Frank Ohlton had worked for the Company 37 years and retired in January 1977, but continued as a part-time consultant. Before leaving the Company on a full-time basis, he had risen to the position of chairman of the board and chief executive officer. Ohlton testified that prior to the 1978 election he gave a speech or a talk to all employees in both the Aurora and Mantua plants. Ohlton indicated that he gave the same speech four times, that he wrote the speech, and that he followed it verbatim each time. According to Ohlton employee Roy Peck, who he had known for many years, was present at the fourth and last time he gave the speech. When Ohlton was asked if he stated to Peck "Are you happier now?" as Peck was leaving, Ohlton answered that he did not remember making the statement, adding that some 50 people were present and that Peck was a "friendly type and he was a friend of mine and I think I could have said that but, I do not remember saying it." Ohlton added that he knew Peck was in favor of the Union.

Robert Matson testified as a present employee of the Company and had worked for the Company for 8 years. He was the assistant plant manager and was actively involved, on behalf of the Company, in the 1978 election campaign. Matson testified that it was company policy or practice that employees were not required to remain at their machines at all times. According to Matson, the employees had prescribed break periods during which they could get coffee, go to the restroom, or converse with a fellow employee on the next machine. Matson related that the policy was followed throughout the 1978 campaign and that, although solicitation was not allowed

during the worktime, there was no interference with union or other solicitation during breaks or at lunchtime.

Matson testified that prior to the 1978 election he learned that employee Paul Scarlett had made a complaint that computer operator Korda had "Trader Magazine" available at his machine. Matson explained that the magazine contained advertising for items which were for sale, and that Korda had been keeping the magazine for distribution at his machine for 5 or 6 years. Matson testified that, notwithstanding this, immediately after Scarlett's complaint Korda was permanently prohibited from keeping a supply of the magazine at his machine in the plant.

Regarding employee Horace Martin, Matson testified that 5 or 6 years ago Martin was an "extruder" operator under his supervision and his performance was "sub-normal." Matson added that at one point Martin made a "very costly mistake" and was then placed in another job. Regarding Martin's activities during the 1978 campaign, Matson testified that he felt Martin was not in favor of the Union because in April or May, and during the campaign, Martin told him that he was for the Company and was worried about some of the employees in the warehouse supporting the Union, adding that he (Martin) was "not behind it."

Edward Hrobak testified as a present employee of the Company and had worked for the Company for 15 years. During the 1978 election campaign he was a "foreman trainee" on the third shift. Hrobak indicated that he had no actual disciplinary authority but could make recommendations to his own supervisor. Any action was solely up to the supervisor. Hrobak indicated he also voted in the 1978 election. Hrobak testified that he was assigned to the third shift by the quality control general foreman, Ron Fournety, because the third shift "needed supervision and direction." Hrobak denied that he watched employees to see if they were engaging in any union activity. Hrobak related that he spoke to the quality control inspector, Dave Toth, two or three times for spending too much time away from his job. According to Hrobak, on one such occasion Toth was actually outside the plant with employee Ralph Hayes. On another such occasion, Hrobak indicated he observed Toth talking to employee Hayes at Hayes' machine and he went up and asked Toth if he "had any trouble" and Toth replied that there was no trouble. Hrobak testified that he then told Toth that he should not spend so much time "on the line." Hrobak indicated that he also spoke to the other three inspectors on the third shift about wasting time, adding that Toth was not singled out and that he devoted no more time to monitoring Toth's work activities than those activities of the other three inspectors on the shift. Toth further denied that anyone else in management ever requested that he monitor Toth because of his union support or activities.

Ronald Fournety testified as a present employee of the Company and had worked for the Company for 15 years. He was the quality control general foreman and foreman-trainee Hrobak worked under him. Fournety testified that in the fall or winter of 1977 Hrobak was made a foreman-trainee on the third shift although he did

not become a salaried employee and "full-fledged foreman" until the spring of 1979. According to Fourtney, Hrobak's job on the third shift was to "supervise and direct the third shift" and answer questions about specific jobs and specific products. Fourtney went on to testify that, prior to Hrobak's assignment to the third shift, there had been no quality control supervisor on that shift, although one was needed because there was "idle time . . . on breaks" during the shift. Fourtney testified that he gave no special instructions to Hrobak to watch Dave Toth or anyone else on the shift.

#### B. Evaluation of Testimony, Evidence, and Law and Initial Conclusions

##### 1. The discharge of Horace Martin

The issue of Martin's discharge is the most difficult issue in this case. He supported the Union and I find the Company knew this. The Company was firmly against the Union and Human Resource Manager Oster's job was to see to it that the Union did not get in. The matter, however, is not that clear cut. Martin did make mistakes, and often. The election and campaign had been over for a year, and other more active union supporters were not discharged. The remaining effects and aftermath of the 1978 campaign and election had been wiped clean with the settlement agreement of March 26, 1979. However, after the election and prior to the settlement agreement of March 26, 1979, strong feelings and infighting had continued. A complaint and objections were pending. The Company was also in the middle of a merger. After the settlement Martin had again started to pass out union authorization cards and literature, and stated at least his intentions of filing a charge with the Board regarding his numerous warnings that commenced in the fall of 1978. The General Counsel in this case has, I find made a *prima facie* showing sufficient to support the inference that Martin's union activities were a motivating factor in the Company's decision to discharge him. There now remains the question as to whether the Company, because of his errors and mistakes, would have discharged Martin in the absence of his union support and activities.<sup>21</sup> I find and conclude that Martin would have been discharged in any event.

Hickman replaced Summerfield as Martin's foreman in June 1978, soon after the election (on June 8). Martin worked under Hickman some 9 months prior to his discharge. As far as Martin's work record was concerned, the slate was wiped clean by Hickman. But Hickman as a supervisor turned out to be a harder taskmaster than Summerfield, although he was initially against making Martin's December warning a "final warning." With the new year (1979) Martin's errors or mistakes continued into March and April. Hickman began to have less patience with Martin and promptly reported certain of Martin's mistakes. Martin began to feel pressured, and, although he had survived Summerfield, he had renewed doubts about his job stability, for whatever reason. I find that at this point, in the early spring of 1979, Martin was boarding on desperation and sought or saw some meas-

ure of protection in his personal and renewed union activities in again passing out union authorization cards and literature. With the settlement agreement of late March 1979, for the first time in over 2 years the Company was free of any pending charges or cases before the Board, and free of any active union campaign. The Company's merger activities went in to full swing. Employee Jenkins was discharged on April 5, 1979, and on his behalf the Union filed a charge with the Board over the discharge on April 19. Like Martin, Jenkins had been a union supporter. That Martin would follow Jenkins with his own charge, upon his discharge, was reasonably suspected. Martin's postdischarge threats or actual contact with the Board was thus no surprise to the Company.<sup>22</sup> Nor do I find that it was a motivating factor in Martin's discharge. I also do not find that the Company violated its own three warning-final warning rule. The documentary evidence in the case reflects numerous written warnings, both before and after the so-called final warning in December 1978. This evidence and Hickman's testimony, together with that of Oster, Materials Manager Lanese, and Employee Relations Manager Richards, reflects without rebuttal that Martin made many errors and mistakes, far more than other employees. Martin himself conceded that he made errors. Martin was an intense and somewhat sensitive individual, and became fearful of and obsessed with critical remarks about his work. He felt endangered, perhaps in his own mind, because of his prior union activities. This itself may have contributed to perhaps some of Martin's continued mistakes. There was pressure for him to improve, but I find that the slate was indeed wiped clean. Out of several hundred employees, many of which were union supporters, Martin was not one who was chosen to be discharged because of his union support or activities. I find that the Company in this case has succeeded in its burden of proving that Martin would have been discharged in the absence of his union support, and that his discharge was thus not violative of the Act.

##### 2. The discharge of Delbert Lee Jenkins

Employee Delbert Jenkins had worked for the Company for 10 years when he was discharged on April 5, 1979. He was a union supporter during the 1978 campaign, passing out union authorization cards and literature. The Company, I find, knew of his support. Employee Relations Manager Richards testified that she had been told of Jenkins' union activities in 1978. Richards indicated that Jenkins had no particular attendance problems and was a good employee. Even after his union activities of 1978 the Company felt well enough of Jenkins to advance \$800 in high school tuition in February 1979

<sup>22</sup> Martin was discharge April 27. Although his discharge was "filed" April 30, and later amended, Martin initially executed or signed the charge on April 24. Employee Relations Manager Betty Richards testified that sometime after April 17, but before Martin's discharge on April 27, Hickman told her that Martin had either contacted the Board, or was going to contact the Board. Hickman testified that Martin told him, before he was discharged, that he had been in contact with the Board and that he wanted a meeting with Human Resource Manager Oster. The meeting was never held and Hickman denied telling Oster that Martin had been to the Board.

<sup>21</sup> *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

for Jenkins to complete his education part-time over the following 2 years. Why, then, Jenkins' abrupt discharge April 5, 1979?

I am convinced in this case, in any event, that Jenkins' union activities of almost a year ago had nothing to do with his discharge. According to Richards the sole reason for the discharge was the failure of Jenkins to call him in accordance with company policy, when physically able to do so, for more than 3 working days.<sup>23</sup> It is undisputed that Jenkins had a legitimate reason to be out, but was physically able to call in.<sup>24</sup> Jenkins worked the third or night shift (10:30 p.m.-6:30 a.m.) from Sunday night until Friday morning. On Wednesday, March 21, Jenkins' wife called in on his behalf. On Thursday, March 22, Jenkins went to the plant to get his checks, but did not work. On Friday, March 23, Jenkins saw his doctor and on Sunday, March 25, the beginning of his workweek, Jenkins called in and talked to his foreman (Heavner), explaining that he would be out with back problems.<sup>25</sup> During the day on Thursday, March 29, Jenkins went to the plant and again picked up his check, but did not work. The next contact Jenkins had with the plant was 4 working days later on Wednesday, April 4, when Jenkins went to the plant late in the day and after Heavner had sent another employee to his home to seek Jenkins out.<sup>26</sup> The following morning (April 5) Jenkins obtained a doctor's slip, reported to personnel, and was discharged. In his testimony Jenkins conceded he knew of the company 3-day call-in policy and that it was grounds for discharge, but claimed that company policies meant nothing and "never have." Jenkins further explained that he felt no need to call in after his March 25 telephone conversation with Foreman Heavner, that he had no phone at his house, and did not wish to bother his neighbors.

When Jenkins arrived at the plant the morning of April 5, he went to personnel, saw Richards, and turned over his doctor's slip to her. Richards then called in General Foremen Chenoweth, and Jenkins was discharged. Chenoweth testified that the decision to discharge Jenkins was made jointly with Richards. I find that Richards was the controlling factor here. Richards came off as a "by the book" and "hard-nosed" employee relations manager.<sup>27</sup> Richards considered Jenkins' actions and attitude in failing to call in lackadaisical, to say the least. In Richards' eyes, to violate the rule or policy was bad enough, but to do so in such a blithe manner, telephone or no telephone, was close to unforgivable. Richards, I find, became infuriated with Jenkins over the incident and chose quickly to impose the most severe

penalty. The action taken against Jenkins may well be considered as harsh under the circumstances, and this may have been justifiably a factor resulting in the issuance of the complaint in this case. No matter how one views the discharge, whether unfortunate or otherwise, as previously indicated I conclude that Jenkins' earlier union support and activities played no role in Richards' actions in discharging Jenkins, and thus his discharge was not violative of the Act.

### 3. The remaining allegations and issues in light of the foregoing findings and conclusions

Based on the charges filed in April 1979 and subsequent complaints issued in Cases 8-CA-12769 (discharge of Delbert Jenkins) and 8-CA-12782 (discharge of Horace Martin and events leading thereto), the Regional Director concluded that the settlement agreement entered into on March 21, 1979, had been violated. The Regional Director thus withdrew his approval of and vacated the settlement agreement, rescinded his approval of the Union's withdrawal of its objections in Case 8-RC-11343, returned the parties to the *status quo ante* existing prior to the settlement agreement, and consolidated all four cases for hearing. I have found herein that there were no violations of the Act in the Jenkins and Martin cases and thus conclude that the Regional Director's action in vacating the settlement agreement was groundless.<sup>28</sup> I thus shall recommend that the Regional Director rescind his withdrawal and vacation of the settlement agreement and thus reinstate the same, thereby placing all parties (and Cases 8-CA-12236 and 8-RC-11343) back to the status quo existing at and after execution and approval of the settlement agreement. Certain amendments to the consolidated complaint were granted during the hearing of the case. These amendments consisted of additional alleged violations of Section 8(a)(1) of the Act which occurred in 1978, and which came to light during portions of the testimony in the case. I consider these amendments to be additional allegations in Case 8-CA-12236, the only existing complaint at the time the settlement agreement was entered into (March 21, 1979). Having found no grounds to withdraw and vacate the settlement agreement, and thus recommending its reinstatement, there exists no further reasons in the case to discuss and make findings and conclusions regarding the alleged violations of Section 8(a)(1) of the Act set forth in the complaint in Case 8-CA-12236, as amended, and the surviving objections in Case 8-RC-11343.<sup>29</sup>

Upon the foregoing findings of fact and initial conclusions, and upon the entire record, I hereby make the following:

<sup>23</sup> Jenkins testified that the reasons given for his discharge were failing to call in and "fighting." There is no evidence in the case that Jenkins had been "fighting," nor does the Company claim it had anything to do with the discharge.

<sup>24</sup> The doctor's slip obtained and turned in by Jenkins the morning of April 5 restricted Jenkins only from "lifting and bending."

<sup>25</sup> Jenkins testified he told Heavner he would call him when he knew he would be able to return to work. Heavner testified that he told Jenkins to "keep in touch with us and let us know."

<sup>26</sup> Also, on April 4, Richards sent a "Mail-O-Gram" to Jenkins' home.

<sup>27</sup> Such characteristics or attributes are surely considered by many to be advantageous in a personnel officer. As Richards herself testified, she was in charge of hiring, firing, wage administration, and all things related to personnel.

<sup>28</sup> This in no way reflects any conclusion on my part that there was no substantial justification for the issuance of the complaints in Cases 8-CA-12769 and 8-CA-12782.

<sup>29</sup> The General Counsel argues, in pleadings in the case, that the Union's withdrawal of its objections was not a "*quid pro quo*" for the execution of the settlement agreement. I disagree. The settlement was intended to resolve all issues then pending, including those raised in the objections, whether or not directly and completely alleged in the complaint in Case 8-CA-12236.

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging and Petitioning Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate the Act in discharging employee Delbert Lee Jenkins on April 5, 1979, as alleged in the complaint in Case 8-CA-12769.

4. Respondent did not violate the Act in discharging employee Horace A. Martin on April 27, 1979, or otherwise discriminate against him, as alleged in the complaint in Case 8-CA-12782.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER<sup>30</sup>

It is hereby ordered that:

<sup>30</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the

1. The complaints in Cases 8-CA-12769 and 8-CA-12782 be, and the same are, hereby dismissed.

2. The Regional Director for Region 8 of the Board withdraw his vacation of the settlement agreement entered into by the parties on March 21, 1979, and by his renewed approval, reinstate the same.

3. The Union, concurrently with the actions decreed in paragraph 2, above, renew its motion to withdraw its objections filed in Case 8-RC-11343, and the said Regional Director further renew his approval of said motion and certify the results of the election held June 8, 1978.

4. The normal and established principles of compliance shall be applied to the settlement agreement as reinstated, but with credit given to Respondent for compliance made and accomplished prior to the vacation of said agreement.

findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.